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**DISTRICT COURT
CLARK COUNTY, NEVADA
FAMILY DIVISION**

<p>XXXXXXXXXXXXXXXXXX Petitioner, vs. XXXXXXXXXXXXXXXXXX Respondent.</p> <p>_____ /</p>	<p>CASE NO: D-19-XXXXXXXX-C DEPT NO: Y NO HEARING REQUESTED</p>
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MOTION TO UNSEAL CERTAIN J.A.V.S.

NOTICE: YOU MAY FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED HEARING DATE.

COMES NOW, Our Nevada Judges, Inc., a Nevada non-profit corporation, by and through the undersigned counsel, and hereby files a motion to unseal.

This motion is based upon the following memorandum of points and authorities, and the exhibits attached hereto.

MEMORANDUM OF POINTS AND AUTHORITIES

An SCR 229(1)(c) non-party news reporter may file a motion to unseal. SRCR 4(2). SRCR 1(4) provides the scope of the rules on sealing and redaction. A list of

1 NRS Chapters is provided, but the list is not exclusive¹ and actually manifests the
2 harmonious construction² principle of statutory construction with the additional
3 caveat that the court rules³ give way to any “specific” statute governing sealing and
4 redaction. In other words, SRCR 1(4) is not categorically inapplicable to the
5 unsealing of actions filed under NRS Chapters 125, but rather, yields to certain
6 “specific” statutes like NRS 125.110.
7

8 “A court's authority to limit or preclude public access to judicial records and
9 documents stems from three sources: constitutional law, statutory law, and
10 common law.” *Howard v. State*, 128 Nev. 736, 291 P. 3d 137 (2012). See also
11 *United States v. James*, 663 F. Supp. 2d 1018, 1020 (W.D. Wash. 2009) (“domestic
12 press outlets unquestionably have standing to challenge access to court
13 documents.”) (citation omitted). The *Howard* Court pointed out at the time that the
14 common law generally favors public access but gives way to statutes and court
15 rules. While there were no constitutional issues relevant to the *Howard* Court’s
16 analysis at the time, the Supreme Court later clarified that a First Amendment right
17 of access to the underlying proceedings exists. *Falconi v. Eighth Jud. Dist. Ct.*, 140
18 Nev., Advance Op. 8 (2024). See also *Civil Beat Law Ctr. for the Pub. Int., Inc. v.*
19 *Maile*, 113 F.4th 1168, 1180 (9th Cir. 2024) (Hawai’i Court rules requiring all
20 medical and health records be filed under seal without further order of a judge are
21 unconstitutionally overbroad).
22
23

24 ¹ SRCR 1(4): “These rules do not apply to the sealing or redacting of court records under
25 **specific** statutes, **such as...**” (emphasis added).

26 ² *Simmons Self-Storage vs Rib Roof, Inc.*, 130 Nev. 540, 546, 331 P. 3d 850, 854 (2014)
27 (“[T]his court interprets `provisions within a common statutory scheme harmoniously with
28 one another in accordance with the general purpose of those statutes' to avoid
unreasonable or absurd results and give effect to the Legislature's intent.”)

³ *Weddell v. Stewart*, 127 Nev. 645, 650, 261 P.3d 1080, 1084 (2011) (“[R]ules of
statutory construction apply to court rules.”)

1 The *Falconi* Court broadly expanded the scope of the ruling in *Stephens*
2 *Media, LLC. v. Eighth Judicial District Court*, 125 Nev. 849, 221 P. 3d 1240 (2009)
3 from criminal proceedings to all civil proceedings, including family law
4 proceedings. Importantly, the *Stephens Media* Court recognized a powerful
5 distinction left untouched by the *Howard* Court; namely, that there was a
6 distinction between oral proceedings and documentation that “merely facilitate[s]
7 and expedite[s]” one of those oral proceedings, specifically, jury questionnaires
8 and *voir dire*. The *Stephens Media* Court recognized that the purpose of the jury
9 questionnaires was their direct connection to and facilitation of *voir dire*
10 proceedings such that they constituted access to the proceedings themselves and
11 thus implicated First Amendment concerns. Analogously, the J.A.V.S. videos are a
12 distillation of preceding motion practice and actual records of the hearings
13 themselves. Accordingly, ONJ is hereby requesting the unsealing of all J.A.V.S.
14 videos for any hearings that occurred on or after January 13, 2022.

15 Even if this Court came to the conclusion that certain interpretations of law
16 could allow court records to be hidden from the press, this Court must adopt the
17 interpretation that is constitutional. This is because “when the language of a
18 statute admits of two constructions, one of which would render it constitutional
19 and valid and the other unconstitutional and void, that construction should be
20 adopted which will save the statute.” *State v. Castaneda*, 126 Nev. 478, 481, 245
21 P.3d 550, 553 (2010).

22 “People in an open society do not demand infallibility from their institutions,
23 but it is difficult for them to accept what they are prohibited from observing.”
24 *Richmond Newspapers*, 448 U. S., at 572.

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1 Pursuant to NRS 239B.030 the undersigned hereby affirms that this document
2 does not contain the social security number of any person.

3 **DATED** this Nov 26, 2024

4
5 By: /s/ Luke Busby
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10 DECLARATION OF ALEXANDER FALCONI

11 I, Alexander M. Falconi, declare that I have read the forgoing *Motion* and that
12 the contents are true and correct of my own personal knowledge, except for those
13 matters I have stated that are not of my own personal knowledge, but that I only
14 believe them to be true, and as for those matters, I do believe they are true.

15
16 ***I declare under penalty of perjury that the foregoing is true and correct.***

17
18 EXECUTED this Nov 26, 2024

19 

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21 _____
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